

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
MICHAEL BRINKLEY

CAN 05-11529-NG

v

ANDREA CABRAL

OFFICE

NOV 17 2005

EXHAUSTION REQUIREMENT IN HABEAS
CORPUS CASES IS NOT JURISDICTIONAL AND WOULD
BE EXCUSED WHERE PETITION WARRANTED SWIFTE
DISMISSAL BECAUSE IT IS FACIALLY WITHOUT
MERIT AND TO WITHHOLD SO ORDERING FOR
LACK OF EXHAUSTION WOULD BE IDLE FORMALITY
HOWELL V OESTERIE C.A.S (FLA) 1980 606 F2D 437

HABEAS PETITIONERS FAILURE TO
DEVELOPE CLAIM IN STATE COURT WILL BE
EXCUSED AND HEARING MANDATED IF HE
CAN SHOW THAT FUNDAMENTAL MISCARriage
OF JUSTICE WOULD RESULT FROM FAILURE
TO HOLD FEDERAL EVIDENTIARY HEARING

KEEN V. TAMAYA REYES US. OR 1992,
112 S. CT 1715, 504 US 1, 118 L. ED 20318
ON REMAND 969 F.2D 839

RESPECTFULLY SUBMITTED
~~Michael~~
018-107665